

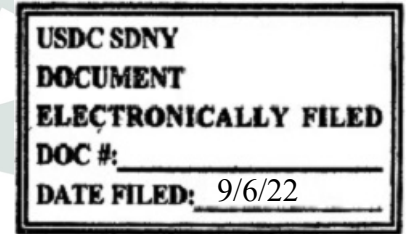
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September 1, 2022

LETTER-MOTION – FILED VIA ECF

Hon. Barbara Moses, U.S. Magistrate Judge
U.S District Court, Southern District of New York
500 Pearl Street, Room 740
New York, NY 10007

MEMO ENDORSED

**Re: *Johnson v. Ample Samples Inc.* (1:22-cv-05327-LAK-BCM)
Request to File Under Seal & Publicly File Redacted Document**

Dear Judge Moses,

This firm is counsel to Eric Johnson, Plaintiff in the above-referenced action. Pursuant to Section 3 of Your Honor's Individual Practices, Plaintiff hereby requests permission to file a document under seal in connection with his planned motion for default judgment against Defendant, Ample Samples Inc., in the above-referenced action, and to publicly file a redacted version of that document in connection with the motion.

This is an action for copyright infringement and copyright management violations arising from Defendant's unauthorized use of a certain photograph created and owned by Plaintiff. Defendant has failed to timely appear and answer or otherwise respond to the complaint, and the Clerk has entered a Certificate of Default against Defendant (Dkt. 13).

Plaintiff intends to file a motion for default judgment against Defendant, and to seek as part of that motion, *inter alia*, an award of statutory damages for Defendant's copyright infringement pursuant to 17 U.S.C. § 504(c). In support thereof, Plaintiff intends to submit an invoice for a photograph usage license fee. *See Mockingbird 38, LLC v. Int'l Bus. Times, Inc.*, 21-cv-283(LJL) 2022 WL 154137, *6 (S.D.N.Y. Jan. 18, 2022) ("courts in this Circuit have typically awarded statutory damages approximately three to five times the licensing fee at issue").

Plaintiff submits this letter-motion to seek the Court's permission to file that license fee invoice under seal, and to publicly file a copy of the invoice with the identity of the licensees, the licensee fee amount, and the licensed usage redacted. (For purpose of completeness, it is noted that the invoice also sets forth Plaintiff's social security number, all but the last four digits of which would be redacted consistent with Fed. R. Civ. P. 5.2 and Section 3[h] of Your Honor's Individual Practices.)

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Plaintiff seeks to file this license fee invoice under seal with a redacted copy filed publicly because, since Plaintiff negotiates licenses for his photographs on a case-by-case basis, public filing of an unredacted copy of this invoice would put Plaintiff at a negotiating disadvantage with future potential licensees, by revealing to such potential licensees the amount paid for this license, the identity of the licensees (including the size and nature of their business), and the usage for which Plaintiff accepted this fee.

Public filing of an unredacted copy of this license invoice would also put the non-party licensees at a negotiating disadvantage in the future, by revealing to other future licensors the amount that these licensees may be willing to pay for licenses for comparable use of comparable photographs.

Plaintiff respectfully submits that the foregoing considerations and concerns outweigh this Court's presumption in favor of public filing, and that Plaintiff's proposed redactions will not impair judicial efficiency, will serve to protect Plaintiff's and the licensees' privacy and business interests, and are narrowly tailored so as to allow for public filing of the document (rather than filing of the document under seal in its entirety) while adequately addressing the above-described concerns. *See Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119-20 (2d Cir. 2006).

Accordingly, Plaintiff respectfully requests that the Court issue an order permitting this invoice to be filed under seal in connection with Plaintiff forthcoming motion for default judgment against Defendant, and a redacted copy to be publicly filed, in the form shown at **Appendix A** hereto. Pursuant to Section 3[c] of Your Honor's Individual Practices, an unredacted copy of this invoice (with the proposed redactions highlighted) is filed under seal concurrently with the filing of this letter-motion.

We thank you for your time and consideration.

Respectfully submitted,



Alexander Malbin, Esq.

Counsel for Plaintiff, Eric Johnson

Enc.

Application DENIED. SO ORDERED.



Barbara Moses
United States Magistrate Judge
September 6, 2022